



मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 152]

भोपाल, मंगलवार, दिनांक 4 अप्रैल 2017—चैत्र 14, शक 1939

नवीन एवं नवकरणीय ऊर्जा विभाग
मंत्रालय, वल्लभ भवन, भोपाल

भोपाल, दिनांक 4 अप्रैल 2017

क्र. एफ 6-9-2014-साठ- मंत्रि परिषद दिनांक 23 अगस्त 2016 एवं दिनांक 07 फरवरी 2017 को सम्पन्न बैठकों में मध्यप्रदेश पावर मैनेजमेंट कंपनी लिमिटेड (MPPMCL) द्वारा रीवा अल्ट्रा मेगा सोलर परियोजना से उत्पादित होने वाली विद्युत के क्रय के भुगतान की सुनिश्चितता हेतु, राज्य शासन की गारंटी दिये जाने के संबंध में निर्णय एवं राज्य शासन की गारंटी का अनुमोदन किया गया है सर्वसाधारण की जानकारी के लिये उक्त का प्रकाशन “मध्यप्रदेश राजपत्र (असाधारण)” में किया जा रहा है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
मनु श्रीवास्तव, प्रमुख सचिव.

विषय:—मध्यप्रदेश पावर मैनेजमेंट कंपनी लिमिटेड (MPPMCL) द्वारा रीवा अल्ट्रा मेगा सोलर परियोजना से उत्पादित होने वाली विद्युत के क्रय के भुगतान की सुनिश्चितता हेतु, राज्य शासन की गारंटी दिये जाने के संबंध में.

निर्णय लिया गया है कि रीवा जिले में स्थापित की जा रही 750 मेगावाट क्षमता की रीवा अल्ट्रा मेगा सोलर परियोजना से उत्पादित MPPMCL द्वारा क्रय की जाने वाली विद्युत के संबंध में निम्न भुगतान की सुनिश्चितता हेतु लेटर आफ क्रेडिट एवं भुगतान सुनिश्चितता कोष [Payment Security Fund (PSF)] के बाद तीसरी गारंटी के रूप में राज्य शासन की गारंटी संलग्न गारंटी अनुबंध के अधार पर दी जाए.

- (क) विद्युत क्रय अनुबंध (PPA) के अंतर्गत देय राशि, यथा विद्युत क्रय भुगतान, विलम्बित भुगतान पर अधिभार, Liquidated Damages (LD) व विद्युत क्रय अनुबंध (PPA) के डिफाल्ट के स्थिति में समापन भुगतान, और
- (ख) भुगतान सुनिश्चितता कोष [Payment Security Fund (PSF)] से किये गये भुगतान की प्रतिपूर्ति व उस पर देय ब्याज का भुगतान.

GUARANTEE OF THE STATE OF MADHYA PRADESH

(To be executed on stamp paper of appropriate value for each MPPMCL PPA)

This guarantee (**Guarantee**) is made at Bhopal, Madhya Pradesh, India, on this [●] day of [●], 2016 by THE GOVERNOR OF MADHYA PRADESH (hereinafter referred to as the **Guarantor** or **GoMP**, which expression shall unless repugnant to the subject or context thereof include its successors, assigns and permitted substitutes).

Further to the "Solar Policy for Encouraging Generation of Power through Solar Power Projects in Madhya Pradesh", notified by New and Renewable Energy Department, Government of Madhya Pradesh (**NRED**), on 20th July 2012, and as amended from time to time (**MP Solar Policy**), GoMP has decided to set up 3 (three) units of ground mounted grid-connected solar photovoltaic power plants of 250 MW each, to be developed on a pre-identified land parcel inside Rewa Solar Project located in District Rewa, in the state of Madhya Pradesh, India. The solar energy generated from the Units is envisaged to be supplied to MPPMCL (*defined below*) and Delhi Metro Rail Corporation.

In order to select appropriately experienced private entity(ies) to develop the units, Rewa Ultra Mega Solar Limited (**RUMSL**) invited proposals from all interested entities by launching a single stage two-envelope competitive bidding process followed by a reverse auction process pursuant to a request for proposals issued on 16 March 2016 (**RFP**). Pursuant to the terms of the RFP, [*Name of the Selected Bidder*] submitted its Bid. Following the process of selection of Bidders, as set out in the RFP, RUMSL accepted [*Name of the Selected Bidder*]'s Bid to develop [*Insert the number of Units in respect of which Letter of Award has been issued*] number of Unit(s) comprising [*Insert the aggregate capacity of the Units in MW for which Letter of Award has been issued*] MW capacity. Subsequently, RUMSL issued the Letter of Award on [●], 2016 to the [*Name of the Selected Bidder*] appointing it as the project developer for [Unit 1/ Unit 2/ Unit 3].

[*Name of the Selected Bidder*] has since incorporated [*Name of the SPV*], a company incorporated under Companies Act, 2013, having its registered office at [●] and informed RUMSL, MPPMCL and DMRC, through its letter dated [●] 2016 that [*Name of the SPV*] will be the project developer and will be the entity which shall undertake and perform its obligations, including the obligation to enter into this Guarantee.

In consideration of [*Name of the SPV*], (referred to as the **Company**, which expression will unless it is repugnant to the subject or context thereof include its successors and assigns) undertaking to develop, construct, own, operate and maintain the [Unit 1/ Unit 2/ Unit 3] and to sell energy from the Unit(s) to M.P. Power Management Company Limited, a wholly owned company of the Government of Madhya Pradesh (referred to as **MPPMCL**, which expression will unless it is repugnant to the subject or context thereof include its successors and assigns), as specified in the power purchase agreement, dated [●] 2016, executed between the Company, MPPMCL and RUMSL, as amended from time to time (hereinafter referred to as the **PPA**), and RUMSL undertaking to perform its obligations set out in the PPA; the implementation support agreement, dated [●] 2016, executed between the Company and RUMSL, as amended from time to time (hereinafter referred to as the **Implementation Support Agreement**); the land use permission agreement, dated [●] 2016, executed between the Company, NRED and RUMSL, as amended from time to time (hereinafter referred to as the **Unit LUPA**) and the coordination and scheduling agreement, dated [●] 2016, executed between MPPMCL, Delhi Metro Rail Corporation, RUMSL, the Company and [*Insert names of project developers for the other Units*] as amended from time to time (hereinafter referred to as the **Coordination and Scheduling Agreement**), the Guarantor hereby covenants and agrees as follows:

In this Guarantee, unless the context requires otherwise or defined, capitalised terms shall have the

meaning ascribed to them in the project agreements executed between the Company, MPPMCL, RUMSL and NRED, i.e., the PPA, the Implementation Support Agreement, the Unit LUPA and the , the Coordination and Scheduling Agreement.

I. GoMP Guarantee

- (a) Guarantee of MPPMCL Payment Obligations: The Guarantor hereby irrevocably, unconditionally and without reservation guarantees to pay to the Company, within 15 (fifteen) Days following submission by the Company of a written demand, in accordance with clause 1(b) of this Guarantee, any and every undisputed sum of money which MPPMCL is liable to pay to the Company under or pursuant to the PPA, including the Tariff Payment, Late Payment Surcharge, Liquidated Damages, and any Termination Compensation, and shall have failed to pay in accordance with the terms of the PPA.

In order to give full effect to this Guarantee, the Company shall be entitled to treat GoMP as the principal debtor.

Further, the Guarantor hereby irrevocably, unconditionally and without reservation guarantees to pay to RUMSL, within 15 (fifteen) Days following submission by the RUMSL of a written demand, in accordance with clause 1(b) of this Guarantee, any and every undisputed sum of money which MPPMCL is liable to pay to RUMSL under or pursuant to the PPA, including with respect to the amounts paid to the Company from the Payment Security Fund in accordance with the PPA, including the interest on such amount as specified in the PPA and the amounts to be repaid by MPPMCL to RUMSL, in relation to any payments made by RUMSL to the Company against the Monthly Bill/Supplementary Bill, in accordance with the provisions of the PPA.

In order to give full effect to this Guarantee, RUMSL shall be entitled to treat GoMP as the principal debtor.

The obligations of GoMP under this Guarantee are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the PPA or any other Project Agreements executed or to be executed between the Company, MPPMCL, RUMSL, NRED or any other entity, in relation to the Unit(s).

The GoMP shall not revoke this Guarantee during its currency, except with the previous express consent of the Company in writing. Further that, notwithstanding receipt of consent to revocation of this Guarantee from the Company, the GoMP shall not revoke this Guarantee, except with the previous express consent of RUMSL in writing, as far as it applies to the guaranteed payment obligations to RUMSL, during its currency.

- (b) Conditions Relating to Demand: The Company and RUMSL shall be entitled to make a demand for payment upon the Guarantor pursuant to this Guarantee, if MPPMCL has failed to pay the Company and/or RUMSL directly any amounts mentioned in clause 1(a) above, including the Termination Compensation payable by MPPMCL to the Company under the PPA.

Specifically with respect to the Tariff Payment, the Company shall be entitled to make a demand for payment upon the Guarantor pursuant to this Guarantee if MPPMCL has failed to pay the Company in accordance with the PPA and the Company has failed to realise such amount due from MPPMCL under the PPA by:

- (i) drawing upon the Letter of Credit, in accordance with the provisions of the PPA, at any time on or after the [7th (seventh)] day after the final due date for payment thereof, any sum of money which it is liable to pay to the Company pursuant to or in connection with the PPA; and
- (ii) drawing upon the Payment Security Fund, in accordance with the provisions of the PPA.

Any written demand notice made by the Company with respect to demanding Tariff Payments shall state that MPPMCL has failed to fulfil and comply with its payment obligations, in accordance with the terms and conditions of the PPA and the Company has failed to realise such amount due from MPPMCL under the PPA by drawing upon the Letter of Credit and the Payment Security Fund, in accordance with the terms and conditions of the PPA and shall accompany the relevant Monthly Bill and/or the Supplementary Bill, as the case may be.

Any written demand notice made by RUMSL with respect to demanding amounts mentioned in clause 1 (a) shall state that MPPMCL has failed to fulfil and comply with its payment obligations, in accordance with the terms and conditions of the PPA.

Any written demand made by the Company and/or RUMSL stating that MPPMCL has failed to fulfil and comply with its payment obligations, in accordance with the terms and conditions of the PPA will be final, conclusive and binding on the GoMP.

The GoMP shall not require the Company and/or RUMSL to justify the invocation of this Guarantee.

(c) Irrevocability, Absoluteness and Unconditionality:

The liability of Guarantor under this Guarantee shall be irrevocable, absolute and unconditional, irrespective of:

- (i) any change in time, manner or place of payment of sums now or hereafter due under the PPA, or any change in any other term of the PPA save and except any change that increases liability of the Guarantor under this Guarantee;
- (ii) the existence of any claim, setoff, defense or other right which Guarantor may have against the Company and/or RUMSL, whether in connection with this Guarantee or in connection with any unrelated transaction;
- (iii) any change in structure, restructuring, insolvency, bankruptcy, re-organisation, dissolution or liquidation of MPPMCL, RUMSL or the Company, or any change in ownership of MPPMCL, RUMSL or the Company or any purported assignment by MPPMCL, RUMSL or the Company or any other circumstance whatsoever which might otherwise constitute a discharge or defense of a guarantor; or
- (iv) any other circumstance which might otherwise constitute a defense available to, or discharge of, MPPMCL or the Guarantor.

2. PAYMENTS

All payments made by the Guarantor hereunder shall be made without set-off or counter-claim and without any deduction or withholding for any reason, except as required by law.

3. Other Provisions of the Guarantee:

(a) Continuing Guarantee: This Guarantee shall be a continuing security and accordingly:

- (i) shall extend to cover all amounts due at any time from MPPMCL to the Company and/or to RUMSL under the PPA; and
- (ii) no failure or delay on the part of the Company and/or RUMSL in exercising any right, power or privilege hereunder and no course of dealing between the Company and/or RUMSL and the Guarantor, or MPPMCL, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Guarantee shall remain in full force and effect from the date hereof until the term of the PPA.

Notwithstanding the foregoing, this Guarantee shall continue in effect until the sums payable under this Guarantee have been indefeasibly paid in full and the Guarantor receives written notice thereof from the Company and RUMSL, such notice to be issued promptly upon such occurrence.

(b) Additional Security: This Guarantee shall be in addition to and not in substitution or derogation of, any other security which the Company and/or RUMSL may at any time hold in respect of the obligations of MPPMCL under the PPA.

(c) Immediate Recourse: Subject to Section 1(b) hereof, the Company or RUMSL shall not be obligated prior to taking steps to enforce this Guarantee to:

- (i) take any action, other than as expressly provided herein, or obtain any judgment against MPPMCL in any court;
- (ii) make or file any claim in bankruptcy of MPPMCL;
- (iii) exercise diligence against MPPMCL; or
- (iv) exercise any legal remedies which may be available to it under or in connection with the PPA, or otherwise.

(d) Taxes and Expenses: The Guarantor shall pay all reasonable expenses (including, without limitation attorney fees) paid or incurred by the Company and/or RUMSL in attempting to collect the obligations of the Guarantor hereunder and in enforcing this Guarantee and any taxes or levies imposed on the Company and/or RUMSL as a result of the Company and/or RUMSL making a call on this Guarantee. If in compliance with the laws of India, any of the taxes mentioned in this clause 3(d) are required to be withheld or deducted by the Guarantor, then the Guarantor shall pay an amount as shall be necessary to ensure that the Company and/or RUMSL, as the case

may be, receives on the due date a net sum equal to such amount as the Company and/or RUMSL, as the case may be, would have received under the PPA.

4. Guarantor's Representations and Warranties

The Guarantor hereby represents, warrants and undertakes to the Company as follows:

- (a) Power and Authority: The Guarantor has full power, authority and legal right to incur the obligations provided for in this Guarantee, to execute and deliver this Guarantee and to perform and observe the terms and provisions hereof.
- (b) Legal Validity: This Guarantee constitutes legal, valid, binding and enforceable obligations of the Guarantor in accordance with the terms.
- (c) Approvals: All necessary action has been taken under the laws of India and the state of Madhya Pradesh to authorise execution, delivery and performance of this Guarantee.
- (d) Direct Obligations: All of the obligations and covenants of the Guarantor contained herein constitute unconditional direct obligations of the Guarantor.

5. Negative Pledge

At any time while this Guarantee remains in effect, the Guarantor shall not take or cause to be taken any action which impairs the Guarantee.

6. Guarantor's Claim

So long as any amount remains due and payable by MPPMCL under the PPA, the Guarantor, upon notification by the Company and/or RUMSL, as the case may be, thereof, shall not by any means (including payment hereunder) or on any ground other than for the purpose of recovery of statutory dues of MPPMCL:

- (a) claim any right of set-off or counterclaim against MPPMCL; or
- (b) so long as any amount is due from MPPMCL to the Company and/or RUMSL, the Guarantor shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against MPPMCL, whether in respect of its liability under this Guarantee or otherwise, or claim in the insolvency or liquidation of MPPMCL or any such other person in competition with the Company and/or RUMSL.

7. Notices

All notices, demands or other communications required to be given shall be in writing in English language and shall be addressed to the Guarantor, MPPMCL, RUMSL or the Company as the case may be, at the following addresses (or to any other address in India, as provided by either party to the other in writing):

Guarantor: [•]

RUMSL: [•]

MPPMCL: [•]

Company: [•]

8. Miscellaneous Provisions

(a) Waiver, Remedies Cumulative: No failure on the part of the Company and/or RUMSL to exercise, and no delay on the part of the Company and/or RUMSL in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by the Company and/or RUMSL shall be effective unless it is in writing. The rights and remedies of the Company and/or RUMSL herein provided are cumulative and not exclusive of any rights or remedies provided by law.

(b) Assignment: The parties hereto shall not assign or transfer all or any part of their respective rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.

Notwithstanding the above, the Company shall be permitted to assign its right, interests and benefits under this Guarantee to Lenders as Security for the Financial Assistance, without the prior consent of the GoMP, MPPMCL or RUMSL.

(c) Governing Law and Jurisdiction: The rights and obligations of the parties under or pursuant to this Guarantee shall be governed by and construed in accordance with Indian law and subject to the exclusive jurisdiction of the courts at Jabalpur.

(d) If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with the Procurer to replace the invalid, illegal or unenforceable provision.

(e) Dispute Resolution:

(i) **Amicable Settlement:** Either party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Guarantee (**Dispute**) by giving a written notice (**Dispute Notice**) to the other party, which shall contain:

- (A) a description of the Dispute;
- (B) the grounds for such Dispute; and
- (C) all written material in support of its claim.

(ii) The other party shall, within thirty [30 (thirty)] Days of issue of Dispute Notice issued under Clause 8(e)(i) above, furnish:

- (A) counter-claim and defences, if any, regarding the Dispute; and
- (B) all written material in support of its defences and counter-claim.

(iii) Within thirty [30 (thirty)] Days of issue of Dispute Notice by any party pursuant to clause 8(e)(i) if the other party does not furnish any counter claim or defence under clause 8(e)(ii) or thirty [30 (thirty)] Days from the date of furnishing counter claims or defence by the other party, both the parties to the Dispute shall meet to settle such Dispute amicably (**Dispute Meeting**). If the parties fail to resolve the Dispute amicably within thirty 30 (thirty) Days from the later of the dates mentioned in this clause, the Dispute shall be referred for dispute resolution in accordance with clause 8(e)(iv).

(iv) Dispute Resolution through Arbitration

(A) Arbitration Procedure

If a Dispute is not resolved within 30 (thirty) Days after the service of a Dispute Notice and, whether or not a Dispute Meeting has been held, any party to the Dispute shall be entitled to refer the Dispute to arbitration (**Notice of Arbitration**) to be finally resolved in the manner set out in this clause 8(e). This Guarantee and the rights and obligations of the parties shall remain in full force and effect pending the award in such arbitration proceeding.

(B) Appointment of Arbitrators

If a Dispute is referred to arbitration by any party such Dispute shall be resolved by a sole arbitrator to be appointed by mutual agreement of the parties. If parties fail to appoint an arbitrator within [30 (thirty)] Days after service of the Notice of Arbitration, such arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

(C) Venue, Language and Rules of Arbitration

The venue of the arbitration shall be New Delhi and the language of the arbitration shall be English. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time

(D) Award and Apportionment of costs

The arbitration award of the arbitrator shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing. The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator.

(v) During the dispute resolution proceedings, the rights and obligations of the parties shall remain in force and the Guarantee will remain operative and no payments due under the Guarantee shall be withheld except any payment in dispute.

- (e) Sovereign Immunity: The Guarantor unconditionally and irrevocably:
- (i) agrees that the execution, delivery and performance by it of this Guarantee do not constitute sovereign acts;
 - (ii) agrees that should any proceedings be brought against it or its assets in any jurisdiction in relation to the Guarantee or any transaction contemplated by this Guarantee, no sovereign immunity from such proceedings shall, to the extent that it would otherwise be entitled to do so under the laws of India, be claimed by it on behalf of itself or with respect to its assets, to the maximum extent permitted by law; and
 - (iii) to the maximum extent permitted by law, waive any right or sovereign immunity which it or any of its assets now has or may acquire in its future in any jurisdiction.
- (f) Subject to any right of appeal, second appeal, revision or any other legal proceedings or remedy available to either party under law, the Company, RUMSL and the Guarantor consents with respect to the enforcement of the final judgment against it in any such proceedings in any jurisdiction in India, to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever, irrespective of its use or intended use)
- (g) Undertaking: The Guarantor hereby agrees and undertakes that it will not use in its defence with respect to the performance of its obligations under this Guarantee or in any proceedings brought against it, with regard to validity, legality and enforceability of this Guarantee, the PPA, the Coordination and Scheduling Agreement, the Implementation Support Agreement and the Unit LUPA.
- (h) Amendment: Notwithstanding anything contained herein that may be construed to the contrary, this Guarantee may be amended, supplemented or modified only with written consent of the Guarantor, RUMSL and the Company.
- (i) All capitalised terms used in this Guarantee and not defined herein shall have the meanings ascribed to them in the PPA.

IN WITNESS WHEREOF, this Guarantee has been executed as of the day and year first written above.

FOR AND ON BEHALF OF THE GOVERNOR OF MADHYA PRADESH.

Name:

• Designation:

Witnesses:

Name:

Name:

Accepted and Agreed:

FOR AND ON BEHALF OF [*Insert name of the Company*]

Name:

Title:

Witnesses:

Accepted and Agreed:

FOR AND ON BEHALF OF M.P. POWER MANAGEMENT COMPANY LIMITED

Name:

Title:

Witnesses:

Accepted and Agreed:

FOR AND ON BEHALF OF REWA ULTRA MEGA SOLAR LIMITED

Name:

Title:

Witnesses: